

**ADR**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FILED

2007 SEP 21 A 9:16

**E-FILING**

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CAL. S.D.

Kaiwen Cai and A096372636,  
Plaintiff,

v.

PAUL D. CLEMENT, Acting Attorney  
General of the United States;  
MICHAEL CHERTOFF, Secretary,  
Department of Homeland Security;  
EMILIO GONZALEZ, Director,  
U.S. Citizenship and Immigration Services  
Christina Poulos, Director, USCIS California  
Services  
Defendants.

**C07 04886**

Civil Action No. \_\_\_\_\_

## COMPLAINT FOR WRIT OF MANDAMUS

To the Honorable Judges of Said Court:

Plaintiff, Kaiwen Cai, through undersigned counsel, allege as follows:

### INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. §1331, and 28 U.S.C. §1361, to redress the deprivation of rights, privileges and immunities secured to Plaintiffs to compel Defendants to perform a duty Defendants owe to Plaintiffs. Jurisdiction is also conferred by 5 U.S.C. §701.
2. This action is brought to compel Defendants and those acting under them to take action on the Applications to Adjust Status, Form I-485, in order for Plaintiffs, to become Permanent Residents the United States.
3. Plaintiffs are eligible to have their Applications adjudicated.
4. Defendants, the Department of Homeland Security and U.S. Citizenship and Immigration Services, are charged by law with the statutory obligation to adjudicate these Applications to Adjust Status, Form I-485.
5. Venue is proper under 28 USC §1391(e) because the Plaintiffs reside in this district and no real property is involved in this action.

### FACTS

6. Plaintiff is a citizen of China. Kaiwen Cai is the beneficiary of a Petition for Relative, Fiancé, or Orphan, Form I-130, which was approved on May 20, 2004. *See* Exhibit 1 (copy of Form I-130 Approval Notice).
7. Based upon Cai's approved I-130, on September 11, 2005 Plaintiffs Kai applied to adjust his status to that of Permanent Resident Aliens by submitting Forms I-485. *See* Exhibit 2 (copy of Kai's I-485 applications).
8. On December 20, 2005 Plaintiffs appeared and were interviewed by Officer of the U.S. Citizenship and Immigration Services, in San Jose, California, pursuant to the adjustment of status process. *See* Exhibit 3 (copy of Interview Notices). At the end of the interview, he was told that his background check was not through and a decision could not be given because of that.
9. It has now been one and half years since Plaintiffs were interviewed by Officer, and their Applications to Adjust Status, Form I-485, have now been pending for over one and half years. Plaintiffs have made several requests to determine the status of their applications and the delays associated with their approval, but have yet to receive any response from any governmental agency.
10. Plaintiff even asked Congress Women Anna G. Eshoo to inquire about this case status (Exhibit 4, copy of Anna G. Eshoo's letter), she was told again that the background check, e.g. name check was still pending.

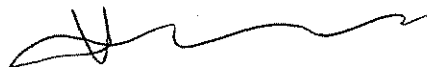
### CLAIMS

1. Defendants have willfully and unreasonably delayed in, and have refused to, adjudicate Plaintiffs' Applications to Adjust Status, Form I-485, thereby depriving the Plaintiffs of the benefit of becoming Permanent Residents of the United States, and the peace of mind they are entitled to;
2. Defendants owe Plaintiffs a duty to adjudicate their Applications, and have unreasonably failed to perform that duty;
3. Plaintiffs have exhausted any administrative remedies that may exist.

### WHEREFORE, Plaintiffs prays that the Court:

1. Compel Defendants and those acting under them to perform their duty to adjudicate Plaintiffs' Applications;
2. Grant such other and further relief as this Court deems proper under the circumstances; and
3. Grant Attorney's fees and costs of Court to Plaintiffs under the Equal Access to Justice Act.

Respectfully submitted this 14th day of September, 2007.

  
**Xia Zhao, Esq., SBN 221100**  
On behalf of Plaintiff

**EXHIBIT 1**

I 485

U.S. Department of Justice  
Immigration and Naturalization Service

## Notice of Action

<b>RECEIPT NUMBER</b> WAC-03-101-53902		<b>CASE TYPE</b> 1130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN	
<b>RECEIPT DATE</b> February 11, 2003	<b>PRIORITY DATE</b> February 10, 2003	<b>PETITIONER</b> A71 020 141 SU, JENNY	
<b>NOTICE DATE</b> May 20, 2004	<b>PAGE</b> 1 of 1	<b>BENEFICIARY</b> CAI, KAIWEN	
<b>JENNY SU</b> 4907 CALLE DE ESCUELA SANTA CLARA CA 95054		<b>Notice Type:</b> Approval Notice <b>Section:</b> Husband or wife of U.S. Citizen, 201(b) INA	

The above petition has been approved. We have sent the original visa petition to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2908. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consulate will be the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.

The NVC will contact the person for whom you are petitioning regarding any concerns further immigrant visa processing steps.

If you have any questions about visa issuance, please contact the NVC directly. However, please allow at least 90 days before calling the NVC if your beneficiary has not received correspondence from the NVC. The telephone number of the NVC is (603) 334-0700.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE  
CALIFORNIA SERVICE CENTER

P. O. BOX 30111

LAGUNA NIGUEL CA 92607-0111

Customer Service Telephone: (800) 375-5281



**EXHIBIT 2**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797C, Notice of Action



<b>REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW</b>			NOTICE DATE November 03, 2005
CASE TYPE <b>FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS</b>			A# A 096 372 636
APPLICATION NUMBER MSC0534727095	RECEIVED DATE September 11, 2005	PRIORITY DATE September 11, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS KAIWEN CAI 1314 SOCORRO AVE SUNNYVALE CA 94089		PLEASE COME TO: U.S. Citizenship and Immigration Services 1887 MONTEREY ROAD 2ND FLR ROOM 200 SAN JOSE CA 95112	

5

llllllllllllllll

ON: Tuesday, December 20, 2005  
AT: 02:00 PM

You are hereby notified to appear for the interview appointment, as scheduled above, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485). **Failure to appear may result in the denial of your application.**

**Who should come with you?**

- If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- If you do not speak English fluently, you should bring an interpreter who is neither a relative nor an interested party in your application.
- Your attorney or authorized representative may come with you to the interview.

NOTE: Every adult who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

**What MUST you bring?**

- Bring this Interview Notice.
- Bring your Government-issued photo identification.
- Bring all your Passports and any other documents, including your Arrival/Departure Document (Form I-94), used to enter the United States.
- Bring your Birth Certificate.
- Bring all documentation establishing your eligibility for Lawful Permanent Resident status (see below: "What else should you bring?").
- Bring all immigration-related documentation ever issued to you.
- Bring both originals and photocopies of all supporting documents. Otherwise, we may keep your originals for our records.
- Bring a certified English translation for each document not in English. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

**What else should you bring?**

- Bring any Employment Authorization card or paper, and any Authorization for Advance Parole (Form I-512) ever issued to you.
- Bring your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have children, bring a Birth Certificate for each of your children.
- If you are married, bring your Marriage Certificate.
- If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:
  - Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;
  - If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;
  - Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;
  - Supporting evidence of your relationship, such as joint financial statements, joint legal documents, joint insurance policies, and photos.
- If you have not already submitted it, bring a completed medical examination (Form I-693) and vaccination supplement in a sealed envelope.
- Bring your Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years.
- If you are employed, bring letters from each of your current employers on company stationery, verifying your current rate of pay and average weekly hours, and bring your pay stubs for the past 2 months.
- Bring completed Affidavit(s) of Support (Form I-864), with all required evidence, including the following for each of your sponsors:
  - Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years;
  - Letters from each current employer on company stationery, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months;
  - Evidence of United States Citizenship or Lawful Permanent Resident status.
- If you have ever been arrested, for each arrest, bring the related Police Report and the original or certified Final Court Disposition, even if the charges have been dismissed or expunged. If no court record is available, furnish a letter from the court with jurisdiction indicating this

**PLEASE MAKE EVERY EFFORT TO KEEP YOUR APPOINTMENT**, even if you do not have all the listed items. If an emergency, such as the hospitalization of a close relative, prevents you from appearing, call the Citizenship and Immigration Services (CIS) customer service as soon as possible. Please be advised that rescheduling will delay processing, may require some steps to be repeated, and will affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call CIS customer service at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1835).

APPLICANT COPY



**EXHIBIT 3**



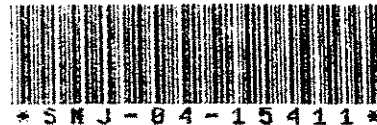
[Click here to print this screen](#)

Name: **Kai Wen Cai**  
Appointment Type: **Information Question**  
Confirmation No.: **SNJ-04-15411** Authentication Code: **176f4**  
Appointment Date: **December 6, 2004** Appointment Time: **11:45 AM**  
Location: **1887 MONTEREY ROAD, San Jose, CA 95112; LOBBY**

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- You must appear in person and bring photo identification along with this appointment letter.
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)
- In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.

This is your Confirmation Number:



\* S N J - 0 4 - 1 5 4 1 1 \*

**If you wish to cancel this appointment, you will need the following Personal Identification Number:**

**42379**

Thank you for using InfoPass  
Return to USCIS On-Line

**EXHIBIT 4**

WASHINGTON OFFICE  
205 CANNON BUILDING  
WASHINGTON, DC 20515-0514  
(202) 225-8104  
FAX (202) 225-8890

DISTRICT OFFICE  
698 EMERSON STREET  
PALO ALTO, CA 94301-1609  
(650) 323-2984  
(408) 246-2339  
(831) 335-2020  
FAX (650) 323-3498

<http://eshoo.house.gov>

**Anna G. Eshoo**  
14th District, California  
**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0514

COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEES  
TELECOMMUNICATIONS AND THE INTERNET  
HEALTH  
PERMANENT SELECT COMMITTEE  
INTELLIGENCE  
SUBCOMMITTEES  
INTELLIGENCE POLICY AND NATIONAL  
SECURITY TRAINING MATTERS  
TECHNICAL AND TACTICAL INTELLIGENCE  
WHIP AT LARGE  
CO-CHAIR  
E-911 CAUCUS  
CO-CHAIR  
MEDICAL TECHNOLOGY CAUCUS  
VICE-CHAIR  
DEMOCRATIC BUDGET GROUP

March 28, 2007

Mr. Kai Wen Cai  
c/o: Mrs. Jenny Su  
1314 Socorro Avenue  
Sunnyvale, California 94089

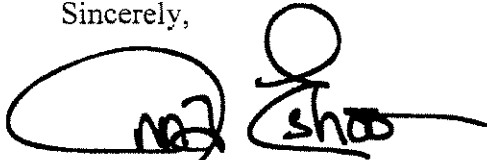
Dear Mr. Cai,

I write to follow up with you regarding your case.

The FBI notified me that your Name Check is still actively being reviewed. Once completed, they will notify the CIS so that a decision can be made on your case. I've asked the CIS to adjudicate your application as expeditiously as possible and notify you directly of their decision.

I hope this information is helpful to you and thank you again for the opportunity to be of assistance. Enclosed is information on security checks that I thought might be of interest to you.

Sincerely,



Anna G. Eshoo  
Member of Congress

Enclosure